

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 2966 of 1991****For Approval and Signature:****HONOURABLE MR.JUSTICE M.R. SHAH**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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MECFAB INDUSTRIES - Petitioner(s)
Versus
STATE OF GUJARAT & 5 - Respondent(s)

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Appearance :

MR JAYESH M PATEL for Petitioner(s) : 1,
Mr. MR Mengdey, AGP for Respondent(s) : 1,
RULE NOT RECD BACK for Respondent(s) : 2 - 6.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**Date : 04/10/2005****ORAL JUDGMENT**

In this petition under Article 226/227 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat, dated 7.11.1989

in suo motu Revision Application No. 96/1986 in quashing and setting aside the Non-Agricultural Use Permission granted by the Taluka Development Officer, Halol, dated 30.11.1981.

2. The land bearing Survey No. 22 admeasuring 25 gunthas was originally owned by Lalitaben Dipakbhai Rathod and others, respondents No. 3 to 5 herein and they obtained Non-Agricultural Use Permission from the Taluka Development Officer, Halol, vide order dated 30.11.1981 and thereafter the said land came to be sold by them to the respondent No.6, Krushna Packages Works, who has constructed their factory building and for that purpose they had taken a loan of Rs. 5,11,000 from Gujarat State Financial Corporation [GSFC]. It appears from the record that the said Krushna Packages Works did not repay the loan and therefore proceedings under Section 29 of The State Financial Corporations Act, 1951, were initiated; the GSFC had taken over possession of the entire land along with machineries, plant, factory building and other construction on 22.12.1989; and pursuant to the advertisement issued by the GSFC in the newspapers for selling the properties the petitioner has purchased the said land in question, and that is how the petitioner became the owner of the land in question. It appears from the record that in the meantime the Additional Chief Secretary (Appeals), Revenue Department, had taken the non-agricultural use permission granted by the T.D.O., Halol, dated

30.11.1981 under suo motu revision being Revision Application SRD No. 96/86 and by order dated 7.11.1989 the Additional Chief Secretary (Appeals), Revenue Department, cancelled the N.A. Use permission granted by the T.D.O., on 30.11.1981. Being aggrieved and dissatisfied with the order passed by the Additional Chief Secretary (Appeals), dated 7.11.1989 in Revision Application SRD No. 96/86 in quashing and setting aside the Non-agricultural use permission granted by the T.D.O., Halol dated 30.11.1981, the petitioner has preferred the present Special Civil Application under Article 226/227 of the Constitution of India.

3. Shri Jayesh M. Patel, appearing on behalf of Shri J.M. Patel, learned advocate for the petitioner, has vehemently submitted that the petitioner has purchased the property in question by registered Sale Deed in a public auction conducted by the GSFC and the impugned order has been passed by the Secretary (Appeals) without giving an opportunity to the petitioner. It is also further submitted by him that by virtue of cancellation of the N.A. Use permission the rights of the petitioner are affected and hence the petitioner was required to be given an opportunity. The impugned order is in breach of principles of natural justice and therefore it is requested to allow the present Special Civil Application.

4. Per contra, Shri Mengdey, learned AGP has supported the order passed by the Secretary (Appeals)

and has submitted that when the proceedings were initiated by the Additional Chief Secretary (Appeals), Revenue Department the petitioner had not purchased the property in question and as the petitioner was not required to be heard it is requested to dismiss the present Special Civil Application.

5. It is true, that at the time when suo motu proceedings were initiated by the Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat, taking the Non-Agricultural Use Permission granted by the Taluka Development Officer, Halol dated 30.11.1981 under suo motu revision the petitioner had no right, title or interest in the land in question, however, at the time when the impugned order came to be passed the petitioner had purchased the property in question by registered Sale Deed in the public auction held by the GSFC and it cannot be disputed that by virtue of quashing and setting aside the N.A. Use Permission granted by the Taluka Development Officer, the rights of the petitioner are affected and therefore the impugned order is against the principles of natural justice. So far as the petitioner is concerned, as before cancelling the N.A. Use Permission the petitioner was not heard nor any opportunity of hearing was given, the impugned order cannot be sustained and the matter is required to be remanded to the Additional Chief Secretary for deciding the same afresh.

6. For the reasons stated above, the petition succeeds. The judgment and order passed by the Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat, dated 7.11.1989 in Revision Application SRD No. 96/1986 in cancelling the Non-Agricultural use permission granted by the Taluka Development Officer, Halol dated 30.11.1981 with respect to the lands bearing Survey No. 22-Paiki situate at Village Magasar, Taluka-Halol, is quashed and set aside. The matter is remanded to the Additional Chief Secretary (Appeals), Revenue Department for deciding the same afresh in accordance with law and on merits and after giving opportunity to the petitioner also. Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

[M.R. Shah, J.]

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